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Please respond to Philadelphia Office

April 27, 2017

The Honorable Edgardo Ramos
United States District Court for the
Southern District of New York
40 Foley Square
New York, NY 10007

VIA ECF

Re: **Patricia Hunter v. Palisades Acquisition XVI, LLC, et al.**
U.S.D.C. – S.D. of NY; No.: 1:16-cv-08779

Dear Judge Ramos:

As you are aware, this firm represents Defendant, Palisades Acquisition XVI, LLC ("Palisades") in the instant case. On April 26, 2017 beginning at 11:00 a.m. and ending at 11:20 a.m., an FRCP 26 telephone conference took place by and between counsel for Defendant, Palisades, and counsel for Plaintiff, Ahmad Keshavarz and Divya Subrahmanyam as well as Amanda Moreno, counsel to Co-Defendants, Sharinn & Lipshie, P.C. and Harvey Sharinn. Plaintiff had previously served the Defendants with written Interrogatories, Request for Production of Documents and Request for Admissions in addition to notice of two Subpoenas to be served on non-parties to the litigation. During the Conference Plaintiff wished to enter into a proposed discovery plan pursuant to FRCP 26(f)(2) and (3) setting deadlines including deadlines for discovery in the instant case. Palisades position is that due to a pending Motion to Dismiss Plaintiff's First Amended Complaint (Docket Entry ("DE") 31 and 32 and incorporated herein as though set forth in full), discovery should be Stayed. Counsel for Co-Defendants does not object to a Stay of discovery. Plaintiff will not agree to a Stay of discovery. As the parties are unable to agree, the purpose of the instant letter pursuant to Your Honor's Individual Practices, 2. (A)(i). "Pleadings and Motions", in conjunction with SDNY Local Civil Rule 37(a)(1) and 37.2, is to request an informal conference with the Court in which Palisades will seek permission to file a Motion to Stay Discovery and for a Protective Order from having to respond to the propounded discovery pending determination of the Motion to Dismiss Plaintiff's First Amended Complaint. The parties have agreed to schedule another FRCP 26 Conference at the appropriate time after the "Stay" issue is decided.

I. PROCEDURAL HISTORY/FACTS

Plaintiff commenced this action in the United States District Court for the Southern District of New York on November 11, 2016. (DE 1). On February 3, 2017, Palisades filed a Motion to Dismiss the Complaint which included argument as to why original Defendant, Palisades Collection, LLC, was an improper party. (DE 25). As the Motion was inadvertently filed before a Pre-Motion Conference was requested, the Court issued an Order denying the Motion without prejudice on February 6, 2017. (DE 26). Ultimately, a Pre-Motion Conference was scheduled for February 20, 2017. (DE 28). On February 14, 2017 Plaintiff filed a Response to Palisades' Request for Pre-Motion Conference (DE 29) and on February 24, 2017 mooted Palisades' Motion to Dismiss Plaintiff's Original Complaint by filing a First Amended Complaint pursuant to FRCP 15 which did not include original Defendant, Palisades Collection, LLC. Palisades, filed a Motion to Dismiss Plaintiff's First Amended Complaint on March 30, 2017 (DE 31 and 32) and Plaintiff's Response to the Motion is due May 1, 2017. The Plaintiff and Defendant, Palisades, have made their respective Initial Unilateral Disclosures pursuant to the FRCP 26.

Notwithstanding the volume of Plaintiff's First Amended Complaint which contained 25 pages with 179 numbered paragraphs and 139 pages of Exhibits, this case arises out of a very simply claim, namely, whether Co-Defendants, Sharinn & Lipshie, P.C. attempted to execute upon a Judgment in favor of Palisades which was allegedly previously vacated against Plaintiffs.

II. LEGAL STANDARD AND ARGUMENT

Pursuant to Federal Rule of Civil Procedure 26(c), the Court "may, for good cause, issue an Order to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense". FRCP 26(c)(1). The Court allows for the crafting of appropriate leave, "including prohibiting the disclosures or discovery altogether"). Duling v. Gristede's Operating Corp., 266 F.R.D. 66, at 71 (SDNY 2010). The party seeking to obtain a Protective Order bears the burden of demonstrating that there was good cause for the Order. See Dove, 963 F.2d at 19; Duling, 266 F.R.D. at 71.

III. LEGAL ARGUMENT

Plaintiff should not be permitted to impose the burden of discovery on Palisades given the fundamental defects in the First Amended Complaint, identical to those in the original Complaint with the exception of the dismissal of Palisades Collection, LLC as a party, which exemplifies the pursuit of flawed litigation. Plaintiff should not be permitted to take discovery while this Court considers Defendant's Motion to Dismiss Plaintiff's deficient First Amended Complaint.

Palisades has argued in its Motion to Dismiss that Plaintiff has failed to properly plead her theories of liability under FRCP 8 with reference to her claim(s) pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692 ("FDCPA"), NY GBL §349 and Conversion. As a result, it is unclear whether Plaintiff is attempting to assert claims that arise prior to November 11, 2015 which are time barred pursuant to the Statute of Limitations under the FDCPA. Palisades' Motion to Dismiss argues in part (DE 32, pps. 5-6 and 10-12) that the Plaintiff may be attempting to pursue claims which are time barred pursuant to the Statute of Limitations for the FDCPA which is one year and the NY GBL §349 and Conversion which are each three years.

The argument is further supported by the recent discovery propounded by Plaintiff on Defendants. For example, Plaintiff's Interrogatory No. 6 and Document Requests 4, 6 and 7 all demand for information and/or documentation from Defendants dating back to the year 2006. In addition, Plaintiff's FRCP 26 Unilateral Disclosures identify as potential witnesses certain employees of Wolpoff & Abramson, LLP and Mann Bracken, LLP whose contact with the underlying State Court Action ended in or about 2007. See Plaintiff's First Amended Complaint (DE 30, pps. 3, 7-11). If Plaintiff is not pursing time barred claims then why is Plaintiff pursuing discovery dated back to 2006 or identifying as witnesses individuals and law firms who actively stopped working on the underlying State Court Action in 2006/2007? As pointed out herein and as argued in Palisades Motion to Dismiss, the manner in which the First Amended Complaint was deficiently plead leaves the "door open" for Plaintiff to pursue time barred claims and perform discovery on them.

There will be no prejudice to the Plaintiff if discovery is delayed long enough for the Motion to Dismiss to be decided. Plaintiff's Opposition Due Date is May 1, 2017. Moreover, any delay was a result of Plaintiff's Conduct. Plaintiff filed a fatally flawed Complaint which she had to amend. To force Palisades to go through unnecessary written discovery when Plaintiff's First Amended Complaint is as equally flawed as the original Complaint would cause Palisades to incur unreasonable expense and the burden of having to respond to a plethora of written discovery of Plaintiff at this time which is not only oppressive but prejudicial. A Stay of discovery in this action would not have any impact on the interest of persons not party to this civil litigation; the public interest would also be unaffected by a granting of a Stay of discovery and the granting of a Motion for Protective Order for Palisades in this case. As such, Palisades respectively requests a Pre-Motion Conference so it may present to the Court it's request to be allowed to file a Motion to Stay discovery and for Protective Order pending adjudication of its Motion to Dismiss in the instant case.

Respectfully submitted,

SPECTOR GADON & ROSEN, P.C.

/s/ Jonathan J. Greystone
JONATHAN J. GREYSTONE

JJG/jg
c: All counsel of record (via ECF)